

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-219929**DATE:** December 20, 1985**MATTER OF:** Roebbelen Engineering, Inc.**DIGEST:**

Where a low bidder establishes 2 mistakes in its bid but only establishes the intended amount for 1 mistake and the second mistake raises doubt that the intended bid would have remained the low bid, the bid may not be corrected nor the second mistake waived. The agency may only permit withdrawal of the bid.

Roebbelen Engineering, Inc. (Roebbelen), the second low bidder, protests the Department of the Army Corps of Engineers' (Corps) decision to allow correction of one of two alleged mistakes in the low bid of Allen L. Bender (Bender) under invitation for bids (IFB) No. DACA05-85-B-0147, for the construction of the Integration Support Facility at McClellan Air Force Base, California. Roebbelen basically argues that correction should not be allowed because Bender's bid, with the requested corrections, would be approximately 1 percent less than Roebbelen's bid, and the circumstances fail to indicate clearly that Bender actually intended to bid lower than Roebbelen.

The protest is sustained.

The solicitation called for bids on three Base Bid items and four additive items to be awarded to the extent funding was available. Funds were available for all the additives under the bids of either Bender or Roebbelen. Bender's and Roebbelen's bids and the requested corrections are as follows:

Base Bid Item No.	<u>Bender</u>	<u>Correction Requested</u>	<u>Roebbelen</u>
1	\$7,007,516		\$7,340,000
2	\$1,019,048		\$1,000,000
3	<u>443,436</u>		<u>450,000</u>
Total			
Base Bid	\$8,470,000	+\$211,000	\$8,790,000

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Additive  
Item No.

A1	\$ 53,888		\$ 115,000
A2	\$ 12,000		\$ 10,000
A3	\$ 27,077	+\$252,000	\$ 255,000
A4	\$ 252,000		\$ 214,000
Total			
bid price	\$8,814,965	+\$463,000	\$9,384,000

Bender claimed that it made two mistakes totaling \$463,000 because it was required to recalculate and change its bid while taking potential subcontractors' last minute quotations over the phone. Bender requested that its bid on Additive Item No. A3 be changed from \$27,077 to \$279,077 because the "9" was inadvertently omitted. Bender also claimed that \$211,000 was erroneously deducted from the Total Base Bid which should be changed to read \$8,681,000. Bender states that it reduced its Base Bid by \$211,000 because it mistakenly believed that the lowest quotation for electrical work covered all the items in the Base Bid. Since Bender received the quotation 10 minutes prior to the 2:00 p.m. bid opening, Bender states it was unable to get a price itemization, but later learned that the quotation just covered Base Bid Item No. 1.

Applicable regulations provide that a mistake in bid alleged before award may be corrected where the bidder presents clear and convincing evidence establishing both the existence of the mistake and the bid actually intended, provided that the correction would not result in the displacement of a lower bidder. Federal Acquisition Regulation, 48 C.F.R. § 14.406-3(a) (1984). Applying this standard, the Corps acknowledged that Bender's \$27,077 price for Additive Item No. A3 clearly resulted from an error because the government's estimate for that item was \$207,000 and 14 of the 17 other bids received ranged from \$176,000 to \$312,000. The Corps reviewed Bender's summary sheet, bid subtotals, adding machine tapes and subcontractors' quotations and determined that Bender clearly and convincingly established both the existence of the mistake and its intended bid price. The correction was therefore allowed.

Regarding the second alleged mistake, the Corps concluded that the bid prices for the Base Bid items were what Bender intended and that any mistake in failing to confirm the quotation was a mistake in judgment for which

correction or other relief is not available. See Handy Tool & Mfg. Co., 60 Comp. Gen. 189 (1981), 81-1 CPD ¶ 27. The Corps, therefore, denied the request to correct the second mistake and proposes an award to Bender based on its originally offered prices except for Additive Item No. A3.

The authority to correct mistakes after bid opening, but before award, is vested in the procuring agency; because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination unless it lacks a reasonable basis. Schoutten Constr. Co., B-215663, Sept. 18, 1984, 84-2 CPD ¶ 318. In this case, the record provides a reasonable basis for the Corps' determination that the first mistake was made and of the intended bid price for that mistake.

Regarding the second alleged mistake, our decisions have recognized that a bidder's reliance on a potential subcontractor's firm quotation that omits an item or contains an error is the type of mistake for which relief may be granted. See MKB Mfg. Corp., 59 Comp. Gen. 195 (1980), 80-1 CPD ¶ 34; Vrooman Constr., Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369; see also J.W. Creech Inc., B-191177, Mar. 8, 1978, 78-1 CPD ¶ 186. We therefore disagree with the Corps' determination that Bender made a judgment mistake.

We believe that although Bender's price was based on a misapprehension of the facts, it was the actually intended bid price, and it is not possible to determine what Bender would have bid if it had been aware of its error. In this regard, correction of a mistake is proper even when the intended bid cannot be determined exactly if it nevertheless is clear that the intended bid falls within a narrow range of uncertainty that is significantly below the next low bid. Sam Gonzales, Inc., B-216728, Feb. 1, 1985, 85-1 CPD ¶ 125; Western States Constr. Co., B-191209, Aug. 29, 1978, 78-2 CPD ¶ 149. Where there is evidence that a mistake was made but no clear and convincing evidence of the intended bid price or that the estimated intended bid price would remain the low bid, the bid may not be corrected nor may the error be waived; the agency may only permit withdrawal of the bid. Fortec Constrs., B-203190.2, Sept. 29, 1981, 81-2 CPD ¶ 264.

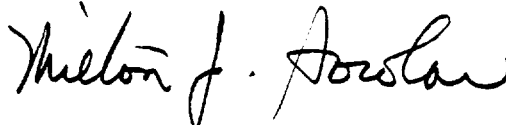
The record shows that Bender received quotations from various electrical subcontractors ranging from \$1,431,385 to \$1,788,000, aside from the incomplete quotation of \$1,220,000 upon which Bender allegedly relied. Bender asserts that it would have selected the next lowest

quotation, if it had known of the omission in the lowest quotation. While Bender might have used the next lowest quotation, the fact remains that Bender essentially is recalculating its bid based on that assumption. Except in the rare circumstances where it is clear that the intended bid falls within a narrow range of uncertainty significantly below the next low bid, a bidder may not recalculate its bid after bid opening to reflect a price that was never intended before bid opening. See J.W. Creech Inc., supra. In this case, by permitting Bender to recalculate its bid based on the other available quotations, we would be permitting Bender to choose whether or not to accept an award since use of the highest quotation would result in raising Bender's total bid price to \$9,634,965, which exceeds Roebbelen's total bid price of \$9,384,000. Permitting such a choice would be inconsistent with the integrity of the competitive sealed-bidding system and would be prejudicial to other bidders. See Bruce-Andersen Co., 61 Comp. Gen. 30 (1981), 81-2 CPD ¶ 310.

Furthermore, Bender's worksheets fail to show an intended Total Base Bid price of \$9,277,965 for which it requests correction, and the correction would bring Bender's bid within 1 percent of Roebbelen's bid. The closer an alleged intended bid comes to the next low bid, the greater is the threat that correction poses to the integrity of the competitive sealed-bidding system, and therefore the stronger the evidence must be to establish the intended bid. See Sam Gonzales, Inc., supra. For this reason, we believe that the uncertainty of Bender's intended bid, particularly in light of the availability of subcontractor's quotations that would cause the bid to exceed Roebbelen's, compels permitting only the withdrawal of Bender's bid. Under the circumstances, Bender's bid may not be corrected nor the mistakes waived. The bid must be withdrawn. Fortec Constrs., supra.

We therefore recommend that the Corps award the contract to Roebbelen if its bid is responsive and the firm is responsible.

The protest is sustained.



Acting Comptroller General  
of the United States